



**CITY OF SUNNYVALE
REPORT
Planning Commission**

August 8, 2005

SUBJECT: **2005-0510 – John Travis** [Applicant][Owner]: Application for related proposals on a 1.87 acre site located at **1156 Aster Avenue** in an M-S/ITR/R-3/PD (Industrial & Service/Industrial to Residential/Medium Density Residential/Planned Development) Zoning District;

Motion **Special Development Permit** to construct 44 townhomes;

Motion **Tentative Map** to subdivide one lot into 44 lots and one common lot.

REPORT IN BRIEF

Existing Site Conditions One-story industrial building

Surrounding Land Uses

North Heavy Industrial (concrete paver manufacturing)

South Residential Medium Density

East Light Industrial

West Light Industrial and Residential

Issues Circulation, Open Space, Architecture

Environmental Status A Mitigated Negative Declaration has been prepared in compliance with California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Approve with conditions, including reduction of two housing units

PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Industrial to Residential	Same	Spell Out
Zoning District	M-S/ITR/R-3/PD	Same	R-3/PD
Lot Size	1.87 acres	Same	min.
Gross Floor Area (s.f.)	32,525	90,400	NA
Lot Coverage (%)	39.8	37.0	40 max.
Floor Area Ratio (FAR)	39.8	110	NA
No. of Units		44	45 max.
Below Market Rate Units		6	12.5%
Density (units/acre)		23.5	24 max.
Meets 75% min?		23.5	18 min.
Bedrooms/Unit		3	---
Unit Sizes (s.f.)		2,056 (gross)	N/A
Lockable Storage/Unit		300 (within garage)	300 cu. ft. min.
No. of Buildings On-Site	1	5	---
★ Distance Between Buildings		20	23 min. 2nd story
★ Building Height (ft.)	25	36	30 max.
★ No. of Stories	1	2.5	3 max.
Setbacks (Facing Property)			
★ Front	22.5	15	20 min avg.
Left Side	64.66	14	7 min.
Right Side	64.66	14	11 min.
Rear	49	32	20 min.
Landscaping (sq. ft.)			
Total Landscaping	17,319	19,460	16,291 min.
Landscaping/Unit		442	425 min.

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
Usable Open Space/Unit		400	400 min.
Frontage Width (ft.)	17	15	15 min.
Parking			
Total Spaces	108	110	110 min.
Standard Spaces	79	20	18 min.
Compact Spaces/ % of Total		none	10 max.
Accessible Spaces		2	2 min.
Covered Spaces		88	88 min.
Aisle Width (ft.)		24	24 min.
Bicycle Parking		within garages	Guideline 15 secure 3 guest
Stormwater			
Impervious Surface Area (s.f.)	68,623	68,149	Group 1 Project > 43,560
Impervious Surface (%)	84.2	83.6	NA

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS

Description of Proposed Project

The proposed development includes 44 three-bedroom townhomes laid out in two symmetrical U-shaped private streets. The units front onto landscaped walkways between the units. Each home includes a two-car garage and guest parking is located along the south boundary of the project. The applicant has requested a deviation to overall height at 36 feet where 30 is permitted, and 2.5 stories where 2 stories is permitted, average front yard setback of 15 feet where 20 is required, and a minimum distance between buildings of 20 feet where 23 is required. The application also includes a deviation to minimum lot size dimensions for the purpose of creating ownership housing.

Background

The existing building was constructed in 1984 as an office and industrial building. The subject site was designated for residential development as part of ITR Site 4b by the Futures Study approved in 1993.

Environmental Review

A Mitigated Negative Declaration has been prepared in compliance with the California Environmental Quality Act provisions and City Guidelines. An initial study has determined that the proposed project with mitigation would not create any significant environmental impacts (see Attachment C, Initial Study). The required mitigation addresses potential noise impacts.

An acoustical assessment was conducted by Charles M. Salter Associates Inc. on May 3, 2005. The study included a 24-hour period assessment and monitoring as well as spot measurements on the site. The noise conditions identified three sources of noise, the brick plant north of the site and some of its associated machinery which operates on a 24-hour basis, the rail road, which includes both Caltrain and freight trains, north of the site, and Lawrence Expressway automobile noise. Instantaneous noises were not observed, such as train whistles. Staff would note that there is potential for train whistles though they were not observed. The noise conditions were projected at the worst point along the front of Aster Avenue to be 64db and regressing to 50 db along the rear of the property after construction of the townhomes. Standard construction and closed windows are likely to reduce interior noise to Title 24 requirements of 45 L_{dn}. The outdoor usable space will potentially not achieve the goal of 60 db level near Aster Avenue. However, the project design provides the larger common area near the rear of the site which has a higher level of protection and should be able to achieve the 60 db level noise level goal.

The study recommends disclosure of the existing noise sources, ventilation systems for all units to meet noise level requirements with closed windows, and Sound Transmission Class (STC) rating of 30 or higher to relieve potentially annoying noise levels generated by the industrial use north of the site. The direct environmental mitigation requirement is for ventilation systems. Staff has also included the recommendation for all units to have STC windows to address potential annoyances from the existing conditions.

The location of the common area near the rear of the site addresses the outdoor noise goal for the site although individual patio areas may not achieve this goal. However, the individual patios are a desirable feature for the future residents and are to be retained in the plan.

Special Development Permit**Site Layout:**

The project layout has a U-shaped vehicle circulation pattern with pedestrian access via separate landscaped walkways. The units are oriented perpendicular to Aster Avenue. The project also includes a walking path along the entire perimeter of the site that ties into the new public sidewalk along Aster Avenue.

The buildings have a minimum of 20 feet of space from wall to wall where 23 feet is required for a multistory building without a deviation. Within that space are the private patios, landscaping, and the common walkway separated by a small fence. Staff has included a recommended condition that the applicant makes the patio 12-24 inches deeper, which narrows the space used for the walkway between the fences. The increased patio space will make that area more functional.

Existing trees are located along the perimeter of the site and near the front middle of the site. The site has no notable on-site features; however, the adjacent sites to the south and north are of note. To the south of the site is a 40-foot wide Santa Clara Valley Water District channel separated from the site by a masonry wall. While the applicant has contacted the District to discuss opportunities for use of part of the channel area for landscaping purposes, the District has not been willing to allow co-use of the area at this time, and it will remain walled off from the site. To the north of the site is heavy industrial brick manufacturing plant. The plant is screened from the subject site by extensive mature landscaping of evergreen trees.

Stormwater Management: The project's development results in approximately an identical amount of impervious surface as the existing site. The project provides for a stormwater management plan to detain and treat stormwater runoff on site. The primary treatment mechanisms are in ground mechanical devices and minor amounts of landscape infiltration.

The following Guidelines were considered in the analysis of the project site.

Design Guideline (Site Layout)	Comments
<i>B1. Locate site components such as structures, parking, driveways, walkways, landscaping and open spaces to maximize visual appeal and functional efficiency.</i>	<p>Guest parking is most efficiently congregated around the internal common area in the rear of the site. The parking is located out of view from the street allowing the site to emphasize landscaping and architecture. Trash enclosures are conveniently located for occupant access. Landscaping provides a buffer between adjacent uses, enhanced private streetscape and shading, and it complements the public street frontages and architecture.</p> <p>No sidewalks are provided along the private street, separate pedestrian sidewalks connect the entries to the units with common areas and the public street.</p>

Architecture:

The proposed architecture exhibits a modern look of low pitched roofs with extended bay window features for relief. The applicant has provided additional roof line variation in response to comments at the study session. The applicant has raised every other unit's roofline by two feet. This has increased the project height to 36 feet from the 34 previously requested. The applicant is

proposing a lap siding and composition shingle roof to compliment the style of the homes. The proposed treatments provide a departure from the standard stucco and contemporary stone veneers of other townhomes recently approved in Sunnyvale.

The proposed layout of homes does not directly front the units onto the street, but instead proposes two different types of end units and features that provide interest toward the street. Two of the Aster end units are 2-story instead of 2.5-story height of the main building roofline. Furthermore, the project includes plentiful windows and a bay window projection on the Aster street side elevations. The units are set up about four feet from the grade to provide separation from the street.

The design uses a brown and tan color scheme with the primary color a mid-tone tan with a darker brown base and lighter tan accent colors along with white trim. Staff recommends the applicant explore a bolder or brighter color scheme that is consistent with the architectural style. Staff also recommends that the project have a uniform color scheme that does not vary building by building. Staff has included a condition of approval addressing change to the final color scheme.

The following Guidelines were considered in the analysis of the project architecture.

Name of Guidelines	Comments
<i>B1. Break up large buildings into groups of smaller segments whenever possible to appear smaller in mass and bulk.</i>	The Aster Elevations include two different unit heights to address mass and bulk. The individual rooflines have been modified to provide a two-foot differentiation between units. The design primarily uses windows and projecting "bay" window elements to provide interest and relief.
<i>C1.2.2 Encourage development of diversified building forms and intensities.</i>	The proposed design could be categorized as a modern Victorian interpretation that features windows reminiscent of bay windows. The design is a departure from the recent approved townhome designs that focus on craftsman elements and contemporary stucco finishes and stone veneers. The project provides a substantial degree of density with townhomes at 23.5 units per acre where recent trends have been near 19 units per acre.
<i>C3. Develop a comprehensive architectural theme for multi-building complexes. Unify various site components through use of similar design, material and color.</i>	The applicant proposes use of a common tan and brown color scheme with identical exterior and roof materials for each main building. Staff requests a bolder color scheme as a condition of approval

Landscaping:

The site has no heritage trees among its 20 inventoried specimens. Eight of the twenty on-site trees are defined as “protected.” Protected trees are those that measure 38 inches or greater in circumference when measured at four feet from the ground. Eleven of the total trees are able to be retained within the proposed plan, with five of said trees defined as protected. Two carob trees designated for removal located near the front of the lot in the middle of the site are impacted by the site grading, but may have ability to be retained and will be further reviewed during the grading plan review. The applicant has also indicated that while one of the redwood trees located in the southeast corner of the site is designated to be retained, it may turn out that the root system has been compromised and may also need to be removed. In addition to the on-site trees two trees are located just off the site and are to be included in a construction tree protection plan to ensure their survival. The City Arborist finds the tree preservation and protection plan adequate. The proposed trees for removal are located within the development footprint and are not able to be retained. The arborist has also concurred with the assessment of the trees value and health.

The usable open space for the project is located between the buildings with a 2,400 square foot rectangle located in the middle rear of the site. Due to the size of the project staff has not recommended inclusion of common recreational building or meeting place in the project. However, due to the design factors of the proposed usable space of minimal dimensions, linear orientation, and its primary use as a walking path, staff recommends the project be reduced by two units to expand the usable open space in the rear of the site by an estimated 1,600 square feet. This recommendation results in the reduction of one below market rate unit and one market rate unit from the project for a total of 42 units where 44 are proposed. The density is 22.4 units per acre with staff's recommended reduction. Staff recommends the area be designed primarily as open active space, but that it also include a small picnic or gathering space to one side.

The following Guidelines were considered in the analysis of the project landscaping.

Name of Guidelines	Comments
<i>A4 Properly landscape all areas not covered by structures, driveways and parking.</i>	Proposed landscaping provides a buffer to adjacent uses, open usable space, and acts as a stormwater BMP. Tree wells are included in the private street design as well as intentions for shading of the guest parking spaces
<i>A2 Preserve and incorporate existing natural features, particularly trees, on a site into the landscape design of projects.</i>	11 existing trees are planned to be retained, of which 5 are protected trees.
<i>B1. Locate site components such as structures, parking, driveways, walkways, landscaping and open spaces to maximize visual appeal and functional efficiency.</i>	Staff has recommended expansion of the usable space rectangle area due to nature of the proposed usable spaces as linear and somewhat narrow.

Parking/Circulation:

Vehicle access is provided by two separate U shaped private streets. The streets do not connect to each other. Trash enclosures are proposed at the rear of the site. A new public sidewalk will be installed along Aster Avenue as part of this project. An on-site sidewalk circulates along the perimeter of the site and between the units. All of the guest parking is provided along the rear of the site. No on-street parking is permitted along Aster Avenue due to existence of bike lanes. A condition of approval requires the applicant to verify that a minimum of 24 feet of backup space is available for all parking spaces.

Compliance with Development Standards/Guidelines:

The applicant requests deviations related to building height and stories, distance between buildings, front yard setback and lot dimensions. The justification for the deviations is primarily related to the creation of ownership housing and an attempt to maximize the permissible density on the site as the first development project within ITR 4b. With the expanded open space area in the rear resulting from the reduction of two units staff supports the proposed project's deviations as providing a quality living environment and meeting the goals of encouraging ownership housing.

The City of Sunnyvale recently adopted Transportation Demand Management site design guidelines for areas near major transit stops. The subject site is near the Lawrence Station Caltrain stop and is subject to the site development standards. The project is in conformance with the requirements and Staff recommends the project include an informational kiosk/information display on site to identify transit and rideshare opportunities.

Expected Impact on the Surroundings:

The area to the west, east, and north of this site is designated as ITR (Industrial to Residential) with residential zoning districts to the south. The surrounding residential development has significant setbacks from the project due to the Water District facility and no impacts on these properties are anticipated. The impacts on the existing businesses is potential pressure to monitor their business operations to be compatible with residential neighbors in terms of noise, odors, etc. This pressure could result in businesses choosing to relocate or downsize their operations that may not be compatible with residential uses. The east and west adjacent uses are office light industrial uses and minimal impacts are anticipated. The heavy industrial use to the north may have the greatest impact. The use itself is not easily able to be relocated and is believed to have an extended life expectancy even after redevelopment of the project site to residential. The residential uses are screened by vegetation from the use as well as separated by a perimeter fence from the business, but the close proximity could impact the business operations with potential insurance and liability issues.

The impacts to the project residents are the potential for more vehicle traffic or truck traffic, potential noise, and other impacts from business operations as compared to a homogenous residential neighborhood. Through the Initial Study for CEQA review of this project and the Futures EIR of the early 1990s,

no hazardous material problems were identified on the subject site or in relation to the adjacent industrial operations. This transition is consistent with the intent of the Futures study and specifically the existing ITR zoning.

To identify the issues of compatibility of the transitioning area, staff recommends that a deed declaration be provided by the applicant within the CC&R disclosing abutting uses. Staff has included this as a condition of approval.

Tentative Map

The project includes 44 fee simple townhome lots and one common lot for the private streets and landscape areas. Townhomes include land underneath the units, but the lot areas do not meet lot design requirements for area and dimensions; therefore, the lots require a deviation to the standards. Justification of providing ownership units is generally acceptable for townhome development lot deviations. As individual units, individual utility services are to be provided to each unit including water, electricity and sewer. Street frontage improvements are required, including sidewalks, luminaries and street trees; no additional right-of-way is required. A Home Owners Association will be required for the ongoing maintenance and operation of the development.

Fiscal Impact

The project will contribute park in lieu fees to the City in the amount of \$237,184.20. This fee will be collected prior to the time of final map approval. The project will have a slight net increase in traffic per the TSP and will have an estimated fee of \$5,739.45 for 44 units. Payment is prior to issuance of building permits.

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

The applicant held a neighborhood outreach meeting on July 26th at the subject site. Staff also attended the meeting. Approximately 12 individuals were in attendance. The questions were general in nature regarding the specifics of the development, how they would be maintained after they are built, and when they would be constructed. No opposition to the project was voiced at the meeting nor has staff received any correspondence regarding the project.

Planning Commission Study Session:

The Planning Commission had the opportunity to review the plans at a Study Session on July 25th. The commissioners discussed the general architectural style, colors, design features and deviations, impacts of noise, and roofline variation to summarize the comments. The applicant addressed the roofline variation comments with a revised elevation that alternates raising the roof two feet higher for every other unit.

The Planning Commission was also interested in the pedestrian connectivity for the area. Aster Avenue has no sidewalks on either side of the street at this time. Bike lanes are present on the street. As the area redevelops sidewalks will be installed along Aster. The Caltrain stop to the northeast of the site is accessible from the area, but has limited sidewalk access. Underneath the Lawrence Expressway overpass a pedestrian and bicycle crossing exists to the station area from Willow. Willow Avenue connects Aster to the Caltrain stop and has a sidewalk on the east side of the road.

Public Notice	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 237 notices mailed to the property owners and residents within 300 ft. of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website• Recorded for SunDial

Conclusion

The project is the initial residential development request within ITR 4b. The applicant has attempted to address the issues of site density and compatibility with the area uses. The project includes sound transmission windows to address the most obvious impact of adjacent uses. In combination with the design features, mitigations, and staff's recommended expansion of usable space, staff was able to make the required Findings based on the justifications for the Permit. Findings and General Plan Goals are located in Attachment A and Conditions of Approval in Attachment B.

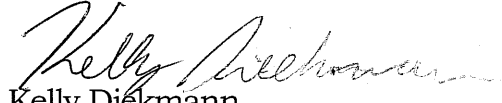
Alternatives

1. Adopt the Mitigated Negative Declaration and approve the Special Development Permit and Tentative Map with attached conditions.
2. Adopt the Mitigated Negative Declaration and approve the Special Development Permit and Tentative Map with modified conditions.
3. Adopt the Mitigated Negative Declaration and deny the Special Development Permit and Tentative Map.
4. Do not adopt the Mitigated Negative Declaration and direct staff as to where additional environmental analysis is required.

Recommendation

Alternative 1

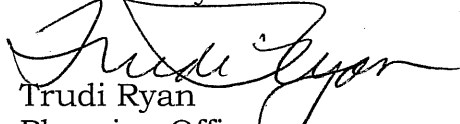
Prepared by:


Kelly Diekmann
Project Planner

Reviewed by:


Gerri Caruso
Principal Planner

Reviewed by:


Trudi Ryan
Planning Officer

Attachments:

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- A. Recommended Findings
 - B. Recommended Conditions of Approval
 - C. Negative Declaration
 - D. Site and Architectural Plans
-

Recommended Findings - Special Development Permit

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as that the proposed project provides 42 additional housing units including 5 BMR units and eases the City's jobs/housing imbalance with the additional housing and replacement of employment producing land uses. The design is appropriate for providing compatible transition of use and a high quality living environment for its future residents. The project site is part of the Futures 4b industrial to residential conversion area which intends for the proposed type of use.

Land Use and Transportation Element

Action Statement N1.4.2 Site higher density residential development in areas to provide transitions between dissimilar neighborhoods and where impacts on adjacent land uses and transportation system are minimal.

Action Statement R.1.7.2 Support regional efforts which promote higher densities near major transit and travel facilities, without increasing the overall density of land usage.

Policy C2.2 Encourage the development of ownership housing to maintain a majority of housing in the City for ownership choice.

Housing and Community Revitalization Sub-Element

Policy C.1 Continue efforts to balance the need for additional housing with other community values, such as preserving the character of established neighborhoods, high quality design, and promoting a sense of identity in each neighborhood.

Goal D Maintain diversity in tenure, type, size and location of housing to permit a range of individual choices for all current residents and those expected to become city residents.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties.

The proposed project will complement existing medium residential development in the area and will encourage the transition from industrial use to residential use in the neighborhood as desired by the city's ITR designation for the area.

Recommended Findings - Tentative Map

In order to approve the Tentative Map, the proposed subdivision must be consistent with the general plan. Staff finds that the Tentative Map is in conformance with the General Plan. However, if any of the following findings can be made, the Tentative Map shall be denied. Staff was not able to make any of the following findings and recommends approval of the Tentative Map.

1. That the subdivision is not consistent with the General Plan.
2. That the design or improvement of the proposed subdivision is not consistent with the General Plan.
3. That the site is not physically suitable for the proposed type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.
8. That the map fails to meet or perform one or more requirements or conditions imposed by the "Subdivision Map Act" or by the Municipal Code

Recommended Conditions of Approval - Special Development Permit /Use Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Execute a Special Development Permit document prior to issuance of the building permit.
- B. The Special Development Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is approved prior to the expiration date.
- C. Reproduce the conditions of approval on the plans submitted for building permits.
- D. This Special Development Permit is valid only in accordance with the approved plans. Any major use, site or architectural modifications shall be treated as an amendment to the original approval, and shall be subject to approval at a public hearing before the Planning Commission. Minor modifications shall be approved by the Director of Community Development.
- E. Specific deviations allowed with this Special Development Permit are as follows:
 - a. Minimum lot size of 667 sq. ft.
 - b. Parcels without public street frontage
 - c. Maximum height of 2.5 stories and 36 feet as measured from top of curb.
 - d. Average front yard setback of 15 feet.
 - e. Minimum distance between buildings of 23 feet.
- F. To address storm water runoff pollution prevention requirements, an Impervious Surface Calculation worksheet is required to be completed and submitted for the California Regional Water Quality Control Board prior to issuance of a Building Permit.
- G. The project shall be modified to include 42 total housing units with the intent of increasing the size of the open landscape space near units 17 and 28.

2. ENVIRONMENTAL MITIGATION MEASURES

- A. In addition to complying with applicable City Codes, Ordinances, and Resolutions, the following mitigation measures are incorporated into the project to minimize the identified potential environmental impacts:

MITIGATION MEASURE #1: Mechanical ventilation systems are required for all units in the project to allow for each unit to be able to achieve the 45 db minimum interior noise level with closed windows. The ventilation system details and location is to be included on plans submitted for building permit issuance.

MITIGATION MEASURE #2: Windows and doors for all homes shall have a minimum STC (Sound Transmission Class) rating of 30. STC windows are typically achieved with double-glazed thermal windows with a 3/8" to 3/4" separation and a 1/4" thick pane. Plans submitted for building permits shall include the detailed recommendations of the acoustical consultant for construction design.

3. BMR (BELOW MARKET RATE UNITS)

- A. Comply with Below Market Rate Housing (BMR) requirements as noted in SMC 19.66.
- B. The project will provide 12.5% (5) Below Market Rate ownership dwelling units in compliance with SMC 19.66.
- C. The developer shall submit a site plan to the Housing Officer for review. The plan will include a description of the number, type, size and location of each unit on the site. The Housing Officer will then determine the specific units to be obligated as Below Market Rate (BMR) unit(s). (BMR Administrative Guidelines)
- D. Prior to issuance of a building permit, the developer shall execute a Development Agreement with the City to establish the units. The sale price of the BMR units is established at the time of the execution of the Development Agreement. (BMR Administrative Guidelines)
- E. All BMR dwelling units shall be constructed concurrently with non-BMR units, and shall be dispersed throughout the property and shall reflect the range in numbers of bedrooms provided in the total project and shall not be distinguished by exterior design, construction or materials. (SMC 19.66.020(c))
- F. Sixty days (60) days prior to the estimated occupancy date, the developer shall notify the Housing Division of the BMR units to be available. (BMR Administrative Guidelines)
- G. BMR Ownership Program - Developer and Buyer to execute "Addendum to Purchase Offer" prior to Occupancy Permit and provide copy to City. (BMR Administrative Guidelines)
- H. Ownership Units - Prior to Close of Escrow, a Deed of Trust between the City and the Buyer of the BMR unit shall be recorded to establish resale and occupancy restrictions for a 30-year period.

- I. The original sale price of BMR dwelling units shall comply with sales prices established by the City, which is revised annually. (SMC 19.66.040 (c))
- J. Below Market Rate dwelling units shall be offered for sale only to persons qualified under the terms described in SMC 19.66.040 and 19.66.050 and described more fully in the Administrative Guidelines. (BMR Rental Units / BMR Ownership Program)
- K. Resale of BMR dwelling units shall comply with procedures set forth in SMC 19.66.060.
- L. In the event of any material breach of the Below Market Rate Program requirements and conditions, the City may institute appropriate legal actions or proceedings necessary to ensure compliance. (SMC 19.66.140)
- M. In the event that any of the Below Market Rate dwelling units or a portion thereof is destroyed by fire or other cause, all insurance proceeds therefrom shall be used to rebuild such units. Grantee hereby covenants to cause the City of Sunnyvale to be named additional insured party to all fire and casualty insurance policies pertaining to said assisted units. (BMR Administrative Guidelines)

4. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)

- A. Any proposed deeds, covenants, restrictions and by-laws relating to the subdivision are subject to review and approval by the Director of Community Development and the City Attorney.
- B. Prior to approval of the final map the applicant shall prepare a deed declaration disclosing potential impacts from the adjoining industrial uses and the railroad. The statement shall identify the uses are permitted to operate in perpetuity and associated impacts may include noise, truck traffic, night lighting, etc. The deed restriction language shall be submitted to the Director of Community Development and City Attorney for review and approval.
- C. The developer/Owner shall create a Homeowner's Association that comports with the state law requirements for Common Interest Developments. Covenants, conditions and restrictions (CC&Rs) relating to the development are subject to approval by the City Attorney and Director of Community Development prior to approval of the Final Map. In addition to requirements as may be specified elsewhere, the CC&R's shall include the following provisions:
- D. Membership in and support of an association controlling and maintaining all common facilities shall be mandatory for all property owners within the development.
- E. The homeowners association shall obtain approval from the Director of Community Development prior to any modification of the CC&R's pertaining to or specifying the City.

- F. The developer shall maintain all utilities and landscaping for a period of three years following installation of such improvements or until the improvements are transferred to a homeowners association, following sale of at least 75% of the units, whichever comes first.
- G. The Conditions of Approval of this 2005-0510 Permit shall be included in the CC&Rs.
- H. The CC&Rs shall contain the following language:
1. "Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.
 2. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.
 3. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
 4. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.

5. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
6. Third-Party Beneficiary. The rights of the City of Sunnyvale pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of Sunnyvale.
7. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."
8. Homeowners are prohibited from modifying drainage facilities and/or flow patterns without first obtaining permission from the City.
- I. There shall be provisions for post construction Best Management Practices in the CC&R's in regards to the final stormwater management plan.
- J. The Homeowners Association shall be required to maintain and keep up to date transit information and rideshare information for display in an on site kiosk. The display shall include current VTA transit map, Caltrain station map, contact info websites and phone # for Caltrain, VTA, www.511.org, etc.

5. DESIGN/EXTERIOR COLORS AND MATERIALS

- A. The plans shall be revised to be consistent with the Design Guidelines and development standards to provide the following:
 1. The site plan shall indicate the location of mailboxes and transportation information display/kiosk. Provide detail on display design.
 2. Review the dimensions of the patios in attempt to widen the spaces by 12 to 24 inches to provide additional individual patio area.
 3. Verify that 24 feet of back up space is provided behind each parking space, to be measured from back edge of parking space/garage to back edge of the private street.
 4. The end unit elevations shall include gridded window patterns with detailed trim elements.
- B. The applicant shall provide alternative bolder color schemes for review. Final exterior building materials and color scheme are subject to review and approval of the /Director of Community Development prior to issuance of a building permit.

- C. Roof material shall be 50-year dimensional composition shingle, or as approved by the Director of Community Development.

6. EXTERIOR EQUIPMENT

- A. Individual air conditioning units shall be screened with architecture or landscaping features.

7. FEES

- A. Pay traffic impact fee estimated at \$3,523.37 for 42 units.

8. FENCES

- A. Design and location of any proposed fencing and/or walls are subject to the review and approval by the Director of Community Development.
- B. Install and maintain a 6-foot solid decorative masonry wall along the perimeter of the site, measured from the highest adjoining grade, of a design approved by the Director of Community. Wherever the grade differential is one foot or higher, a concrete or masonry retaining wall shall be installed.

9. LANDSCAPING

- A. Landscape and irrigation plans shall be submitted to the Director of Community Development subject to approval by the Director of Community Development prior to issuance of a Building Permit. Landscaping and irrigation shall be installed prior to occupancy. The landscape plan shall include the following elements:
 - 1. Expanded usable open space located where units 17 and 28 are indicated on the site plan.
 - 2. Landscape plan shall provide active usable space in the major rectangular area.
 - 3. BBQ, picnic, or seating areas shall be included in the rear landscape design at the discretion of the Director of Community Development.
 - 4. Include guest bicycle parking spaces distributed across the site.
- B. Decorative paving at a minimum for the initial 15 feet of the entryways as required by the Director of Community Development.
- C. Provide separate meter for domestic and irrigation water systems.
- D. All landscaping shall be installed in accordance with the approved landscape plan and shall thereafter be maintained in a neat, clean, and healthful condition.
- E. Prepare a landscape maintenance plan subject to review and approval by the Director of Community Development
- F. Trees shall be allowed to grow to the full genetic height and habit (trees shall not be topped). Trees shall be maintained using standard arboriculture practices.

- G. Provide trees at minimum 30 feet intervals along side and rear property lines, except where mature trees are located immediately adjoining on neighboring property.
- H. Deciduous trees shall be provided along southern exposures for passive solar heating purposes.
- I. Of new trees installed, 10% shall be 24-inch box size or larger and no tree shall be less than 15-gallon size.
- J. Any “protected trees”, (as defined in SMC 19.94) approved for removal, shall be replaced with a specimen tree of at least 36-inch box size. The specimen trees are to be of a large species.
- K. Ground cover shall be planted so as to ensure full coverage eighteen months after installation.
- L. All areas not required for parking, driveways or structures shall be landscaped.

10. TREE PRESERVATION

- A. Prior to issuance of a Demolition Permit, a Grading Permit or a Building Permit, whichever occurs first, include the approved tree protection plan in the plan set.
- B. The tree protection plan shall be installed prior to issuance of any Building Permits, subject to the on-site inspection and approval by the City Arborist.
- C. The tree protection plan shall remain in place for the duration of construction.
- D. Overlay Civil plans including utility lines to ensure that the tree root system is not damaged.

11. LIGHTING

- A. Prior to issuance of a Building Permit submit an exterior lighting plan, including fixture and pole designs, for approval by the Director of Community Development. Driveway and parking area lights shall include the following:
- B. High pressure Sodium vapor or other illumination with an equivalent energy efficiency shall be included in the common areas.
- C. Pole heights to be uniform and compatible with the areas, including the adjacent residential areas. Light standards shall be of a pedestrian scale and are not to exceed 14 feet as measured from the ground to top of standard. Bollards may be utilized throughout the site for lighting.
- D. Provide photocells for on/off control of all security and area lights.
- E. All exterior security lights shall be equipped with vandal resistant covers.

- F. Lights shall have shields to prevent glare onto adjacent residential properties and to the internal townhomes
- G. Prior to issuance of a Building Permit submit a contour photometric plan for approval by the Director of Community Development. The plan shall meet the specifications noted in the Standard Development Requirements.

12. PARKING

- A. All uncovered spaces shall be reserved as guest parking spaces and shall be so designated prior to occupancy.
- B. No uncovered parking space shall be offered for rent by the property owners or homeowners association.
- C. Garage and carport spaces shall be maintained at all times so as to allow for parking of vehicles and storage of bicycles.
- D. Garage spaces shall be maintained at all times so as to allow parking of two automobiles.
- E. Specify compact parking spaces on the Building Permit plans. All such areas shall be clearly marked prior to occupancy, as approved by the Director of Community Development.
- F. Unenclosed storage of any vehicle intended for recreation purposes, including land conveyances, vessels and aircraft, but excluding attached camper bodies and motor homes not exceeding 18 feet in length, shall be prohibited on the premises.

13. BICYCLE PARKING

- A. Provide a minimum of 3 guest parking spaces of Class II per VTA Bicycle Technical Guidelines as approved by the Director of Community Development.

14. RECYCLING AND SOLID WASTE

- A. Submit a detailed recycling and solid waste disposal plan to the Director of Community Development for approval.
- B. All exterior recycling and solid waste shall be confined to approved receptacles and enclosures.
- C. The required solid waste and recycling enclosure shall match the design, materials and color of the main building and is subject to review and approval by the Director of Community Development.
- D. The enclosure shall be of masonry construction.

15. UNDERGROUND UTILITIES

- A. All proposed utilities shall be undergrounded.

16. TENTATIVE MAP CONDITIONS

- A. Full development fees shall be paid for each project parcel or lot shown on Final Tract Map and the fees shall be calculated in accordance with City Resolutions current at the time of payment.
- B. Comply with all applicable code requirements as noted in the Standard Development Requirements.
- C. Construct new sidewalk, curb, and gutter along Aster Ave. A minimum 5-foot wide sidewalk is required along entire frontage of project, taking into account of existing mature trees for placement.
- D. All existing utility lines and /or their appurtenances not serving the project and/or have conflicts with the project, shall be capped, abandoned, removed, relocated and/or disposed to the satisfaction of the City.
- E. Individual utility service metering shall be provided to each unit.
- F. Obtain necessary permits from the Department of Public Works for all off-site improvements.
- G. Pay Park In-lieu fees estimated at \$226,403.10 (\$5,390.55/unit) for 42 units, prior to approval of the Final Map. (SMC 18.10)
- H. Dedicate private streets as emergency vehicle ingress-egress easements.
- I. Private street names will be provided per the City of Sunnyvale Street Name System, as selected by the Community Development Department.
- J. At the expense of the subdivider, City staff shall install required street trees of a species determined by the Public Works Department. Obtain approval of a detailed landscape and irrigation plan from the Director of Community Development (SMC 19.38.070) prior to issuance of a Building Permit.